

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 12. NATURAL RESOURCES

#### CHAPTER 15. DEPARTMENT OF WATER RESOURCES

##### PREAMBLE

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| <p><b><u>1. Sections Affected</u></b></p> <p>R12-15-830<br/>R12-15-840</p> <p><b><u>2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u></b></p> <p>Authorizing statutes (R12-15-830): A.R.S. §§ 45-105(B)(1), 45-598(A), and 45-834.01</p> <p>Implementing statutes (R12-15-830): A.R.S. §§ 45-599, 45-834.01, 45-1041, and 45-1052</p> <p>Authorizing statute (R12-15-840): A.R.S. § 45-597(A)</p> <p>Implementing statutes (R12-15-840): A.R.S. §§ 45-544, 45-596, and 45-597</p> <p><b><u>3. List of all previous notices appearing in the Register addressing the proposed rule:</u></b></p> <p>Notice of Rulemaking Docket Opening: 8 A.A.R. 2114, May 10, 2002</p> <p><b><u>4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u></b></p> <p>Name: Ken Slowinski, Legal Division</p> <p>Address: Arizona Department of Water Resources<br/>500 N. 3rd Street<br/>Phoenix, AZ 85004</p> <p>Telephone: (602) 417-2420</p> <p>Fax: (602) 417-2415</p> <p>E-mail: kcslowinski@adwr.state.az.us</p> <p>or</p> <p>Name: Michele L. Lorenzen</p> <p>Address: Arizona Department of Water Resources<br/>500 N. 3rd Street<br/>Phoenix, AZ 85004</p> <p>Telephone: (602) 417-2420</p> <p>Fax: (602) 417-2415</p> <p>E-mail: wrmll@adwr.state.az.us</p> | <p><b><u>Rulemaking Action</u></b></p> <p>New Section<br/>New Section</p> |
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**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Department of Water Resources adopted temporary rules R12-15-830 and R12-15-840 pursuant to A.R.S. § 45-592(B) in 1983. Rule R12-15-830 interprets the words “unreasonably increasing damage” caused by a proposed well or wells and requires hydrological studies from those applicants whose proposed wells are deemed by the Director most likely to cause unreasonably increasing damage to land or other water users because of their higher pumping volumes or locations. Unreasonably increasing damage can occur through drawdown at another well site, subsidence or migration of poor quality water (see A.R.S. §§ 45-598(A) and 45-603). Rule R12-15-840 defines a “replacement well” at or in “approximately the same location” as a well located no greater than 660 feet from the original well and not reasonably expected to annually withdraw groundwater in excess of the historical annual withdrawals from the original well.

During the Department's most recent five-year rule review, the Governor's Regulatory Review Council (G.R.R.C.) directed the Department to make the temporary rules permanent. The purpose of this proposed rulemaking is to comply with G.R.R.C.'s directive by adopting permanent rules substantially identical to the temporary rules.

The Department is not making any changes to the criteria contained in temporary rule R12-15-830 for determining whether withdrawals from a well will unreasonably increase damage to surrounding land or other water users, or to the criteria contained in temporary rule R12-15-840 for determining whether a proposed well qualifies as a replacement well in the same location. However, minor revisions are being made to conform the rules to current style requirements. In addition, rule R12-15-830 is being changed to expressly apply to: (1) recovery wells (A.R.S. § 45-834.01), except existing wells (wells in existence as of June 12, 1980) located inside an applicant's service area (A.R.S. § 45-834.01(B)), and (2) certain wells within active management areas proposed as part of water exchanges (A.R.S. §§ 45-1041 and 45-1052). After temporary rule R12-15-830 was adopted, statutes were enacted requiring the Director to determine whether withdrawals from these wells will cause unreasonably increasing damage to surrounding land or other water users. It is currently the Department's practice to apply the criteria in the temporary rule when making these determinations.

Temporary rule R12-15-840 is being changed to make the rule applicable to determinations by the Director under A.R.S. § 45-544 whether a well from which groundwater is being withdrawn for transportation away from the Little Colorado River plateau groundwater basin or the Parker groundwater basin qualifies as a replacement well in approximately the same location.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

In setting the criteria for proposed rules R12-15-830 and R12-15-840, the Director relied on an ADWR memorandum dated June 4, 2002 from Department hydrologist Frank Corkhill, through Chief Hydrologist Greg Wallace, entitled “Reasonableness of ADWR's Criteria for Well Spacing and Well Impact Rule R12-15-830 and Replacement Well in Same Location Rule R12-15-840.” The Director also relied on the Department's expertise, available information, the advice of industry professionals, and public comments expressed in meetings that occurred during the rulemaking proceeding to adopt the temporary rules.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

Entities affected by proposed rule R12-15-830 include businesses (private water companies, well drillers, subdivision developers, mines, farmers, persons entitled to recover water pursuant to a recovery well permit, etc.); the state; political subdivisions (counties, cities, towns, irrigation districts, water districts, etc.); other governments; landowners; and consumers (the general public).

Existing water users and landowners, including the listed affected entities, benefit from proposed rule R12-15-830; it protects them by prohibiting proposed wells that will cause unreasonably increasing harm to existing water users through unreasonable drawdown of groundwater levels, land subsidence, or migration of poor quality water in the vicinity of the proposed well. These potential negative impacts can lead to physical damage to structures, lowered property values, or future remediation costs. Applicants may benefit from the discovery of these potential negative impacts before drilling a proposed well.

Applicants for new wells, including businesses, political subdivisions, and other governments, as well as the Department, will likely bear costs to comply with proposed rule R12-15-830, but the costs are predicted to be reasonable and no different than costs under temporary rule R12-15-830. Permitting costs include a \$50 application fee, a \$30 permit

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fee, the cost of any mailings to impacted well owners, the cost of any required hydrological study (see below), and the cost of time to prepare the application and public notice.

The existing temporary rule and proposed rule R12-15-830 recognize two classes of wells: (1) single wells pumping 500 gallons per minute (gpm) or less and (2) multiple wells and wells pumping more than 500 gpm. Applicants proposing wells pumping up to 500 gallons per minute (except certain small non-irrigation wells exempt under A.R.S. § 45-454) are covered by R12-15-830, but will usually not be required to prepare a hydrological study or submit hydrological data. Under both the temporary and proposed rule, the Department retains discretion to require such information. Proposed rule R12-15-830 will impose no additional permitting time or cost beyond the costs of the temporary rule.

Applicants for multiple wells and wells proposed to pump more than 500 gallons per minute are required by both the temporary and proposed rule R12-15-830 to submit hydrological studies. Such studies generally cost applicants from \$2,000 to \$5,000, and are performed by hydrological consultants or, depending upon the applicant's capabilities, the applicant's in-house staff.

Small businesses are impacted by the temporary and proposed rule to the same extent as other water users, landowners, and applicants. Small businesses that are existing water users or landowners are protected from unreasonably increasing damage to the same extent as other entities. The 10-to-25-foot drawdown standard in R12-15-830 is a performance standard, applicable to businesses of all sizes. It would not be feasible or fair to exempt small business applicants from these requirements because unreasonably increasing damage can be caused by any well regardless of the identity of its owner.

Consumers (the general public) are not directly impacted by proposed rule R12-15-830. Water providers may pass application and hydrologic study costs indirectly to consumers, but because numerous consumers are typically served by each affected well, such indirect costs to an individual consumer should be quite small. Without the rule, there is an increased potential for substantial costs to groups of property owners who might suffer unreasonably increasing damage in the form of land subsidence, ineffective wells, or a poor quality water supply.

Proposed rule R12-15-840, which has not been substantially changed from the temporary rule, defines a "replacement well in approximately the same location" to include a well or wells drilled no greater than 660 feet from an original well being replaced and not reasonably expected to annually withdraw groundwater in excess of the historical annual withdrawals from the original well. Because of its proximity to the original well and the historical pumping limitation, the replacement well will likely not cause substantial additional negative impacts to surrounding water users exceeding historical impacts. The rule protects similar interests of other water users and nearby lands as are protected by proposed rule R12-15-830. If greater-than-historical pumping from a proposed replacement well in the same location was allowed, drawdown on nearby wells, land subsidence, or migration of poor-quality water could occur at a rate greater than historical pumping by the original well, resulting in unreasonable damage to surrounding land or other water users.

Entities affected by proposed rule R12-15-840 include persons proposing to drill a replacement well in an active management area (except a well exempt under A.R.S. § 45-454), persons withdrawing groundwater from a replacement well in the Little Colorado River plateau groundwater basin or the Parker groundwater basin for transportation away from the groundwater basin, nearby landowners, and the general public. Persons affected could include small and large businesses (private water companies, well drillers, persons entitled to recover stored water pursuant to a recovery well permit, industries pumping groundwater, mines, farms, subdivision developers, etc.); the state; political subdivisions (counties, cities, towns, irrigation districts, water districts, etc.); other governments; landowners; and consumers (the general public).

A person or entity with a proposed well qualifying as a "replacement well at or in approximately the same location" under R12-15-840 avoids the costs associated with drilling a "new well." New well permitting costs include a \$50 application fee, a \$30 permit fee, the cost of any mailings to impacted well owners, the cost of time to prepare the application and the cost of public notice, if applicable. Applicants for new wells, depending upon the number and size of the wells, may have to conduct hydrological studies at costs from approximately \$2,000 to \$5,000 per study. Applicants for replacement wells in approximately the same location, on the other hand, are required only to file a notice of intent and pay a \$10 fee; no hydrological study is required.

R12-15-840 covers all size businesses, including small businesses, except businesses withdrawing groundwater from small non-irrigation wells exempt under A.R.S. § 45-454. The Department has no authority to exempt small businesses withdrawing groundwater from non-exempt wells.

Because the criteria in proposed rules R12-15-830 and R12-15-840 are substantially identical to the criteria in temporary rules R12-15-830 and R12-15-840, which have been in effect since March 11, 1983, and because the persons

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affected by the proposed rules are the same persons affected by the Department's application of the temporary rules, the Department anticipates no discernable new effect on private or public employment, the Department, businesses, political subdivisions, or on state revenues as a result of the adoption of these proposed rules.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

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**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The oral hearing will be held 9:30 a.m., August 8, 2002, at the Department of Water Resources, 3rd Floor, Conference Room A, 500 N. 3rd Street, Phoenix, AZ. Interested persons are invited to make oral comments or submit written comments during the hearing. Written comments will be accepted until August 23, 2002 at 5:00 p.m. Written comments must be submitted to Rose Mae Nokes, Docket Supervisor, Arizona Department of Water Resources, 500 N. 3rd Street, 4th Floor, Phoenix, AZ 85004.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows (red-lined versions of the temporary rules may be obtained from the Department):**

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**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS**

Section

R12-15-830. ~~Reserved~~ Well spacing and well impact

R12-15-840. ~~Reserved~~ Replacement wells in approximately the same location

**ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS**

**R12-15-830. Reserved Well spacing and well impact**

**A. This Section applies:**

- 1. Within active management areas:**
  - a. To decisions of the Director whether a proposed well that is the subject of an application for a permit to construct a new well or replacement well in a new location under A.R.S. § 45-599 will unreasonably increase damage to surrounding land or other water users and**
  - b. If the applicant or participant is an entity other than a city, town, private water company or irrigation district, to decisions of the Director whether new or increased pumping by an applicant for a water exchange permit under A.R.S. § 45-1041 or a participant in a water exchange for which a notice of water exchange is filed under A.R.S. § 45-1051 will unreasonably increase damage to surrounding land or other water users.**
- 2. Within and outside active management areas, to decisions of the Director whether the proposed recovery of stored water from a well that is the subject of an application for a recovery well permit under A.R.S. § 45-834.01 will unreasonably increase damage to surrounding land or other water users, if the well is:**
  - a. A new well, as defined in A.R.S. § 45-591 or**
  - b. Except as provided in A.R.S. § 45-834.01(B)(2) and (3), an existing well as defined in A.R.S. § 45-591.**

**B. Those applications that indicate a proposed design pumping capacity in excess of 500 gallons per minute, or that propose the drilling of multiple wells, shall include a hydrological study of projected declines in water levels due to the operation of the proposed well or wells. The study shall delineate those areas surrounding the proposed well or wells in which the projected impacts on water levels would exceed 10 feet and 25 feet of additional drawdown, respectively, after the first five years of operation of the proposed well or wells. The Director may waive this requirement only if the Director finds that the study is not required to make a determination under subsection (D) or (E). Nothing in this subsection shall preclude the Director, in appropriate cases, from requiring any applicant to submit hydrological data or studies relating to projected drawdown effects.**

**C. In appropriate cases, including when the proposed well is to be located in an area of known land subsidence or poor water quality, the Director may require the applicant to submit hydrological studies or data relating to these considerations. The application shall be rejected if the Director determines that the proposed well would cause an unreasonable and adverse impact from additional regional land subsidence or migration of poor quality water.**

**D. If the Director, after reviewing the application and any hydrological studies or data submitted by the applicant or Department staff, has reasonable cause to believe that the probable impact of the withdrawals from the proposed well on any well of record as of the date of receipt of the application:**

- 1. Will not exceed ten feet of additional drawdown over a five-year period, subject to any determination made under subsection (C), the Director shall determine that the proposed well will not unreasonably increase damage to surrounding land or other water users.**
- 2. Will exceed twenty-five feet of additional drawdown over a five-year period, the Director shall determine that the proposed well will unreasonably increase damage to surrounding land or other water users.**

**E. If, after reviewing the application and any hydrological studies performed by the applicant or Department staff, the Director has reasonable cause to believe that the probable impact of the withdrawals from the proposed well on any well of record as of the date of receipt of the application will be greater than ten feet, but less than twenty-five feet of additional drawdown over a five-year period, the Director may consider the following factors in determining whether the well will unreasonably increase damage to surrounding land or other water users:**

- 1. The depth to groundwater at the proposed well location;**
- 2. The existing rate of decline in groundwater levels at the proposed well location;**
- 3. The number of wells of record so affected;**
- 4. The historical and proposed frequency and magnitude of use of any well of record so affected;**
- 5. The current cost of pumping of any well of record so affected;**
- 6. Any other significant economic impact on any well of record so affected, that is associated with the projected decline in water levels from the operation of the proposed well;**
- 7. If the application is for a replacement well in a new location, the degree of impact that the original well imposed on wells of record so affected;**
- 8. Any efforts by the applicant to mitigate the projected damage to any well of record so affected;**
- 9. The feasibility of the applicant amending the specific location or pumping requirements of the proposed well to lessen the degree of impact on any well of record so affected.**

**F. Before making a determination under subsection (E), the Director shall mail notices to all owners of wells of record so affected, informing them of the application and of the projected impacts on their respective wells. The applicant, upon request, shall be furnished a list of the well owners so notified. Notified well owners may respond to the Department with written comments no later than 30 days after the date of the notice.**

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- G.** If the Director determines that a proposed well will unreasonably increase damage to surrounding land or other water users under subsection (D) or (E), the applicant shall be notified of the location and record owner of the neighboring wells of record the Director has determined would be unreasonably damaged. If within 45 days after being so notified, the applicant obtains signed and notarized consent forms from all these well owners, subject to any determination made under subsection (C), the Director shall determine that the proposed well will not unreasonably increase damage to surrounding land or other water users. If the necessary consent forms are filed after 45 days, the Director shall treat the filing as a new application. The consent form shall be prescribed and furnished by the Director.
- H.** An applicant may, at any time prior to a final determination, amend the application respecting the location or pumping requirements of the proposed well to lessen the degree of impact on neighboring wells of record.
- I.** An application to drill a replacement well in a new location under A.R.S. § 45-599 shall not be rejected under subsection (D) or (E) on the ground that the well will unreasonably increase damage to surrounding land or other water users if the Director determines that:
1. The operation of the replacement well will not significantly impact any well of record which had not historically been impacted by the original well; and,
  2. The replacement well's projected impact on any well of record historically impacted by the original well will not exceed the historical impacts from the original well.
- J.** In this Section:
1. "Additional drawdown" means a lowering in the water levels surrounding a given well that is as a result of the operation of the well, and that is not attributable to existing regional rates of decline or existing impacts from area wells.
  2. "Applicant" means a person or entity filing an application.
  3. "Application" means an application for a well permit under A.R.S. § 45-599, an application for a recovery well permit under A.R.S. § 45-834.01, an application for a water exchange permit under A.R.S. § 45-1041, and a notice of water exchange under A.R.S. § 45-1051, if the Director is required by statute to determine whether withdrawals from a well included in the application or notice will unreasonably increase damage to surrounding land or other water users.
  4. "Well of record" means any well or proposed well not owned by the applicant, that has not been abandoned, and for which:
    - a. A filing has been made under A.R.S. §§ 45-593(A) or 45-596, except any filing that has expired under A.R.S. § 45-596(E); or,
    - b. An application for a permit has been received by the Department under A.R.S. §§ 45-521, 45-599, or 45-834.01, except any application that has been rejected or for which the permit issued under those Sections has expired according to its terms, or for failure to complete the well in a timely manner under A.R.S. §§ 45-599(G) or 45-834.01(F).
- K.** The Director may impose conditions on a permit issued under A.R.S. §§ 45-599, 45-834.01, or 45-1041 to ensure that the operation of the proposed well will meet the requirements of this Section.

**R12-15-840.     ~~Reserved~~ Replacement wells in approximately the same location**

- A.** For purposes of A.R.S. §§ 45-544, 45-596, and 45-597, "replacement well in approximately the same location" and "replacement well at approximately the same location" mean a proposed well that:
1. Will be located no greater than 660 feet from the original well it is replacing and
  2. Will not reasonably be expected to annually withdraw an amount of water in excess of the historical annual withdrawals from the original well.
- B.** The original well may be operated in conjunction with the replacement well, if the total withdrawals do not exceed the historical withdrawals from the original well.
- C.** The Director may impose conditions on the notice of intent to ensure that the drilling and operation of the replacement well will meet the requirements of this Section.